

FIRST REGULAR SESSION

SENATE BILL NO. 64

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 7, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

0422S.01I

AN ACT

To repeal section 538.210, RSMo, and to enact in lieu thereof one new section relating to the evidentiary standard for proving noneconomic damages in medical malpractice cases.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 538.210, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 538.210, to read as follows:

538.210. 1. **In an action against a health care provider for personal injury or death arising out of the rendering of or the failure to render health care services, the plaintiff has the burden of proving noneconomic damages by clear and convincing evidence. The provisions of this subsection shall apply to all causes of action filed on or after August 28, 2013.**

2. In any action [against a health care provider for damages for personal injury or death arising out of the rendering of or the failure to render health care services] **referenced in subsection 1 of this section**, no plaintiff shall recover more than three hundred fifty thousand dollars for noneconomic damages irrespective of the number of defendants.

[2.] 3. (1) Such limitation shall also apply to any individual or entity, or their employees or agents that provide, refer, coordinate, consult upon, or arrange for the delivery of health care services to the plaintiff; and

(2) Who is a defendant in a lawsuit brought against a health care provider under this chapter, or who is a defendant in any lawsuit that arises out of the rendering of or the failure to render health care services.

(3) No individual or entity whose liability is limited by the provisions of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 this chapter shall be liable to any plaintiff based on the actions or omissions of
20 any other entity or person who is not an employee of such individual or entity
21 whose liability is limited by the provisions of this chapter. Such limitation shall
22 apply to all claims for contribution.

23 [3.] 4. In any action against a health care provider for damages for
24 personal injury or death arising out of the rendering of or the failure to render
25 health care services, where the trier of fact is a jury, such jury shall not be
26 instructed by the court with respect to the limitation on an award of noneconomic
27 damages, nor shall counsel for any party or any person providing testimony
28 during such proceeding in any way inform the jury or potential jurors of such
29 limitation.

30 [4.] 5. For purposes of sections 538.205 to 538.230, any spouse claiming
31 damages for loss of consortium of their spouse shall be considered to be the same
32 plaintiff as their spouse.

33 [5.] 6. Any provision of law or court rule to the contrary notwithstanding,
34 an award of punitive damages against a health care provider governed by the
35 provisions of sections 538.205 to 538.230 shall be made only upon a showing by
36 a plaintiff that the health care provider demonstrated willful, wanton or
37 malicious misconduct with respect to his actions which are found to have injured
38 or caused or contributed to cause the damages claimed in the petition.

39 [6.] 7. For purposes of sections 538.205 to 538.230, all individuals and
40 entities asserting a claim for a wrongful death under section 537.080 shall be
41 considered to be one plaintiff.

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